

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States)
Department of Housing and Urban)
Development, on behalf of)
Complainants [REDACTED])
[REDACTED])
[REDACTED])
Charging Party,)
v.)
Dominic Ambroselli, Ambroselli)
Properties L.L.C. and)
Steven Szczerbiak,)
Respondents.)

ALJ No.

FHEO No. 05-10-1348-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about July 6, 2010, Complainants [REDACTED] ("Complainants") filed a complaint with the United States Department of Housing and Urban Development (the "HUD Complaint"), alleging that Respondent Dominic Ambroselli violated the Fair Housing Act, as amended in 1988, 42 U.S.C. § 3601, *et seq.* (the "Act") by discriminating against them on the basis of familial status and race in violation of 42 U.S.C. § 3604(a), (b), (c) and (d). On October 12, 2011, Complainants amended their HUD complaint to name as a respondent Steven Szczerbiak, the onsite property manager. Complainants amended their complaint a second time, on September 10, 2012, to include Ambroselli Properties L.L.C.; to change the last date of alleged discrimination from June 7, 2010 to June 6, 2010; and to provide additional details for their allegations. The complaints also identify Complainants' three minor children as aggrieved parties.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination on behalf of aggrieved persons following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. §§ 3610(g)(1) and (2). The Secretary has delegated to the General Counsel (76 Fed.Reg. 42462), who has retained and re-delegated to the Regional Counsel (76 Fed.Reg. 42465), the authority to issue such a charge, following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity or his or her designee.

The Office of Fair Housing and Equal Opportunity Region V Director, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that discriminatory housing practices have occurred in this case based on race, color and familial status, and has authorized and directed the issuance of this Charge of Discrimination ("Charge"). 42 U.S.C. § 3610(g)(2).

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned HUD Complaint and Determination of Reasonable Cause, Respondents Dominic Ambroselli, Ambroselli Properties L.L.C. and Steven Szczerbiak are hereby charged with discriminating against Complainants [REDACTED] and their minor children, all aggrieved persons as defined by 42 U.S.C. §3602(i), based on race, color and familial status in violation of 42 U.S.C. §3604(a), (b), (c) and (d) as follows:

1. It is unlawful to refuse to negotiate for the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any person because of race, color or familial status. 42 U.S.C. § 3604(a).
2. It is unlawful to discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling because of race, color or familial status. 42 U.S.C. § 3604(b).
3. It is unlawful to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling unit that indicates any preference, limitation, or discrimination based on race, color or familial status, or an intention to make any such preference, limitation or discrimination. 42 U.S.C. § 3604(c).
4. It is unlawful to represent to any person because of race, color or familial status that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available. 42 U.S.C. § 3604(d).
5. Complainants [REDACTED] are a married couple. At all times relevant to this Charge, Complainants had three minor children, ages 4 years, 3 years and 8 months old at the time the complaint was filed. Complainant [REDACTED] is African-American, Complainant [REDACTED] is Puerto Rican and Cuban and their minor children are African-American, Puerto Rican and Cuban.
6. In or around May and June 2010, Complainants were searching for new housing because Complainants wanted to move from Milwaukee to a smaller town, like Kewaskum, that had good public schools and a better environment in which to raise their children. Their oldest child was scheduled to begin Kindergarten in the fall.

7. At all times relevant to this Charge, Respondent Dominic Ambroselli was the owner of Rustic Timbers Apartments ("subject property"), a multifamily housing complex located in Kewaskum, Wisconsin, consisting of 127 dwelling units in 9 buildings, as well as 7 single-family ranch homes.
8. The unit that Complainants applied to rent is a 2-bedroom corner townhouse ("Unit 1") in a 10-unit building located at 232 Timblin Drive.
9. Respondent Ambroselli occasionally does business as Ambroselli Properties, L.L.C. Respondent Ambroselli Properties L.L.C. is a Wisconsin limited liability company that was formed on September 30, 2010. As of July 1, 2012, Respondent Ambroselli Properties L.L.C. is delinquent in its filings with the Wisconsin Secretary of State.
10. Including the subject property, Respondent Ambroselli owns 28 properties consisting of 350 rental units. Respondent Ambroselli is white.
11. At all times relevant to this Charge, Respondent Steven Szczerbiak was employed at the subject property. As part of his duties, Respondent Szczerbiak screened prospective tenants, approved rental applications, prepared leases and assigned rental units to approved applicants. Respondent Szczerbiak regularly showed units at the subject property to prospective tenants. Respondent Szczerbiak was also responsible for overseeing maintenance and upkeep of the subject property. Respondent Szczerbiak is white.
12. At all times relevant to this Charge, Dale Adams was an independent contractor who worked as a rental agent for Respondent Ambroselli. Adams was hired to fill vacancies at Rustic Timbers Apartments and worked in that capacity for approximately 5 months. Adams worked in other capacities for Respondent, Ambroselli, as well, including providing skip-trace services. Adams is white.
13. On Friday, June 4, 2010, Complainants visited the subject property to view an available apartment that had been advertised on the internet website craigslist.com.
14. When Complainants arrived, they parked their car outside the rental office. Before they were able to exit the car, a man they would later learn was Respondent Szczerbiak approached them and directed them to meet with the other rental agent, Dale Adams, at a different area of the subject property. After waiting for a short period of time, Complainants were greeted by rental agent Adams, who proceeded to show them a 3-bedroom apartment, which they did not like, and a 2-bedroom townhouse, which they really liked.
15. On or about Friday June 4, 2010, after viewing the two units, Complainants each completed a rental application for the 2-bedroom townhouse and returned the applications to Adams.

16. Complainants were not informed of any occupancy policy at the time of their application for the two-bedroom unit at the subject property. The applications which Complainants completed do not contain an occupancy policy statement. Complainants' completed applications, which are undated, provide information regarding their rental, employment and credit histories, and also indicate the names and birthdates of their three sons.
17. In an interview with a HUD investigator, Respondent Adams stated that during the 5 months that he worked for Respondent Ambroselli, showing units at the subject property and taking applications from prospective tenants, he was never informed of an occupancy policy, restricting rentals to 2 persons per bedroom.
18. On or about Friday, June 4, 2010, the same day that Complainants completed their rental applications, Adams' assistant and companion, Bonnie Melbin, brought Complainants' applications to the main rental office, where she left them with Respondent Szczerbiak. All of Adams' rental applications were given to Respondent Szczerbiak, who used them to prepare the leases to give to prospective tenants when they arrived to make their rental deposits and sign their leases. Melbin is African-American.
19. The following morning, on or about Saturday, June 5, 2010, Adams called Complainants to inform them that he had approved their applications. He scheduled an appointment for them to meet with Respondent Szczerbiak that same day to sign the lease. Adams advised Complainants to come in the morning, as Respondents had a "first come, first served" policy; and he told them to bring a security deposit for Unit 1. Complainants informed Adams that they would be at the subject property at noon.
20. Also, on or about the morning of June 5, 2010, Adams called Respondent Szczerbiak and informed him that he had approved [REDACTED] for Unit 1, the two-bedroom unit for which Complainants had applied. Adams told Respondent Szczerbiak that Complainants would be coming later that day to sign the lease and to put down a security deposit. Respondent Szczerbiak told Adams to call back when they arrived, but said that he had "to go" and then abruptly hung up the phone. When Adams called back, Respondent Szczerbiak informed Adams that he had already rented out Unit 1.
21. Upon information or belief, at the time that Complainants applied, approximately 16 units were available for rent at the subject property. Adams routinely received lists of available units from Respondent Szczerbiak, which lists were regularly updated. Adams relied upon a list of available units that he received from Respondent Szczerbiak, the day that he showed the 2 and the 3-bedroom units to Complainants. It was Adams' understanding that Unit 1 was available and had not been rented when he offered the unit to Complainants.

22. On or about Saturday, June 5, 2010, Complainants returned to the subject property at approximately noon. Upon arrival, they met Adams at his apartment/office. He informed them that the 2-bedroom corner townhouse unit they were interested in, Unit 1, had already been rented and was no longer available.
23. Adams gave Respondent Ambroselli's phone number to Complainant [REDACTED]. Both Complainant [REDACTED] and Adams tried to call Respondent Ambroselli. They reached him on Adams' phone. Complainant [REDACTED] told Respondent Ambroselli that Complainants had been approved for rental and were promised the 2-bedroom townhome, Unit 1, but that Respondent Szczerbiak rented it to someone else.
24. Complainant [REDACTED] informed Respondent Ambroselli that Complainants were initially interested in the 3-bedroom unit because they have 3 children, but that they didn't like the 3-bedroom unit that they viewed. She told him that they really wanted Unit 1, the 2 bedroom townhome, because it was more private and she believed it would be safer for their children.
25. During the June 5, 2010 telephone call with Complainant [REDACTED] Respondent Ambroselli offered to have Respondent Szczerbiak show Complainants other 2-bedroom units on Sunday, June 6, 2010, and said that Complainants could have whichever unit they chose.
26. At no point during their June 5, 2010 conversation, did Respondent Ambroselli inform Complainant [REDACTED] that he enforced an occupancy policy of 2 persons per bedroom at the subject property, even after she informed him that she had 3 children and was seeking to rent Unit 1, a 2-bedroom townhome. He even offered to have Respondent Szczerbiak show Complainants other 2-bedroom units.
27. On or about Sunday, June 6, 2010, sometime during the day, Complainants returned to the subject property and met with Respondent Szczerbiak to view other 2-bedroom units. Respondent Szczerbiak showed Complainants two 2-bedroom townhouse units, neither of which they liked because they were not corner units, did not have attached garages, were smaller units than Unit 1, and were not in particularly good condition.
28. During the showing on June 6, 2010, Complainant [REDACTED] recalls that one of the first things Respondent Szczerbiak said to Complainants was, "yeah, but none of these will be available, so I don't know why Mr. Ambroselli is having me show you them," or similar words to that effect.
29. After viewing the units on June 6, 2010, Complainants drove back to the rental office. At the rental office, Respondent Szczerbiak asked Complainants how many children they had. When they told him, "3," he said, "I can't move you in

by law because the law only allows 2 people per room," or words to that effect.

30. Complainants objected, stating that one of their children was an infant and would sleep with them in their bedroom, at which point Respondent Szczerbiak replied, "But when he [the infant] turned two, you would have to move, and we wouldn't want to do that," or similar words to that effect.
31. On the drive back to Milwaukee, Complainant [REDACTED] called Adams. Adams advised Complainants to call Respondent Szczerbiak and ask for a written copy of any occupancy policy, as he was not aware of any such policy.
32. On or about Monday, June 7, 2010, Complainant [REDACTED] called Respondent Szczerbiak to request a copy of the occupancy policy, in writing. Respondent Szczerbiak told her that he was busy showing units and hung up on her.
33. Complainant [REDACTED] continued calling Respondent Szczerbiak until he finally answered. He ultimately agreed to send her a copy of the alleged occupancy policy. Later that week, Complainants received a copy of a blank application for the subject property that contained an occupancy policy of 2 persons per bedroom typed in all capital letters. This application differed from the application Complainants were given to fill out when they applied to rent at the subject property; there was no occupancy policy anywhere on the applications that Complainants completed.
34. Also on or about Monday, June 7, 2010, Complainant [REDACTED] called and left a voicemail for Respondent Ambroselli, questioning the 2 person per bedroom occupancy policy which Respondent Szczerbiak claimed to exist, but of which Adams was unaware. When Respondent Ambroselli eventually returned her call, on another day, he also stated that there was a 2 person per bedroom occupancy policy at the subject property.
35. Respondents subsequently leased Unit 1 to a married couple with 2 children (the "successful renters"). The successful renters are not African-American or Hispanic. They rented Unit 1 for \$770 per month and their lease term was from June 21, 2010 through June 20, 2011.
36. Respondent Ambroselli terminated Adams shortly after Complainants applied to rent the subject property. Some time after Complainants filed their complaint, Respondent Ambroselli again contracted with Adams on a part-time basis to perform skip tracing services.
37. Complainants were financially qualified to rent the subject property.
38. Complainants were more qualified to rent the subject property than the successful renters, because, unlike Complainants, the successful renters indicated on their

application for rental that they had declared bankruptcy in the past 7 years.

39. The successful renters' lease agreement was signed on June 8, 2010 by Respondent Szczerbiak and one of the successful renters. On the lease, a security deposit of \$770 is indicated as having been paid on June 8, 2010.
40. The successful renters' check was deposited by Respondent Ambroselli on June 9, 2010.
41. Respondent Ambroselli admits that he maintains a "first come, first served" policy, specifying that a unit is not considered rented until a lease has been signed and a security deposit has been received.
42. Complainants attempted to sign a lease and place a deposit on Unit 1 at the subject property on or about June 5, 2010. The successful renters signed the lease and made their deposit on or about June 8, 2010.
43. Respondent Ambroselli admits that he doesn't have a written occupancy policy, except for the occupancy policy stated on some of his applications. Respondents' lease agreements do not contain any language regarding an occupancy policy.
44. The rental application produced to Complainants by Respondent Szczerbiak differs from the rental application that Complainants filled out with Adams. All of the information requested on the two rental applications is exactly the same except the rental application sent to Complainants by Respondent Szczerbiak contains: (1) an equal housing opportunity symbol; (2) the following occupancy policy: "CAPACITY LIMITS: ONE BEDROOM-2 PEOPLE, TWO BEDROOMS-4 PEOPLE, THREE BEDROOMS-6 PEOPLE;" and (3) language indicating that "Starting May 1, 2007, all applicants will have income requirements in that the rental amount cannot exceed 30% of gross combined applicant(s) monthly income." The only additional item that Adams' application contains is that it should be returned to him at a specific address.
45. Respondents admitted that Adams was permitted to use a different rental application than Respondent Szczerbiak, which application did not state any occupancy policy.
46. During the HUD investigation, Unit 1, the 2-bedroom unit that Complainants wanted to rent, was measured and determined to be approximately 1158 square feet. In Respondent Ambroselli's written answer to a data request from HUD, he stated that all 2-bedroom townhouse units at the subject property, which includes Unit 1, measure even larger, at approximately 1450 square feet. Again, during the investigation, the bedrooms in Unit 1 were measured to be approximately 12 ft. x 17 ft.; and 13 ft. x 17 ft., respectively. Respondent Ambroselli again stated that each bedroom is larger, at 13 ft. x 18 ft.

47. The Village of Kewaskum's Municipal Zoning Code-RM-1 Multifamily Residential District, Section 95-37, provides that a 2-bedroom unit must have a minimum of 650 square feet. *See* Kewaskum, WI., Code § 95.0307(e) (2004). On information and belief, the municipal code does not establish minimum square footage requirements for bedroom sizes or limit the number of occupants per bedroom. Where the Kewaskum code is silent, Wisconsin State law applies. *See* Wis. Admin. Code, § 361.03(5) (2011).
48. Wisconsin has adopted the 2009 International Building Code (IBC). *See* Wis. Admin. Code, § 361.05(1) (2011). On information and belief, prior to adopting the 2009 IBC, Wisconsin followed the 2006 IBC. Under both the 2006 and 2009 IBC, 200 gross square feet per occupant is required in a residence. *See* I.B.C. § I.B.C. § 1004.1, Table 1004.1.1(2006); I.B.C. § 1004.1, Table 1004.1.1 (2009).
49. Accordingly, in Kewaskum a two-bedroom unit must be at least 650 square feet with a minimum of 1000 square feet for a family of 5, regardless of bedroom size.
50. Under both Kewaskum's local code and Wisconsin state law, Unit 1 at the subject property was sufficiently large to house a family of 5, like Complainant's family.
51. Two witnesses, one of whom wished to remain anonymous, said that they were aware of statements made by Respondent Ambroselli in 2010 indicating a desire on his part not to rent to African-Americans or "blacks."
52. Bonnie Melbin, Adams' assistant and companion, stated to a HUD investigator that she overheard a conversation in April 2010 between Adams and Respondent Ambroselli where Respondent Ambroselli stated to Adams that he didn't want "a lot of blacks around," or similar words to that effect. Later, in May 2010, she overheard a phone call where Respondent Ambroselli told Adams that "this is a small community, you have to be careful about renting to too many blacks; I have a reputation to look out for" or similar words to that effect. These alleged comments were made mere weeks before Complainants applied to rent a unit at the subject property.
53. Respondent Szczerbiak did not ask the number of people in Complainants' household until he met with Complainants in person on Sunday, June 6, 2010. Therefore, on Saturday, June 5, 2010, when Respondent Szczerbiak falsely stated to Adams that Unit 1 had already been rented and could not be leased to Complainants, he was not relying upon Respondents' alleged occupancy policy to deny them rental.
54. When, on or about June 5, 2010, after Adams told Respondent Szczerbiak that he had approved "the Washingtons" for rental and that they would be stopping by to sign the lease for Unit 1 and make a deposit, Respondent Szczerbiak informed Adams that he had already rented out Unit 1, when he had not, in fact, rented out Unit 1, Respondent Szczerbiak otherwise made unavailable or denied

Complainants the right to rent an available unit based on race, in violation of 42 U.S.C. § 3604(a); and falsely represented availability of a unit based on race and color in violation of 42 U.S.C. § 3604(d).

55. When Respondents violated their own "first come, first served" policy to rent to a family that was not African-American or Hispanic, rather than Complainants, who sought rental first, Respondents discriminated against Complainants in the terms, conditions or privileges of sale or rental of a dwelling based on their race and color in violation of 42 U.S.C. § 3604(b).
56. When Respondents refused to rent a 2-bedroom townhome unit to Complainants because they had 5 members in their family, despite the fact that their family size met all applicable local and state occupancy codes to rent a 2-bedroom unit, and then rented the same 2-bedroom unit to a family of 4, Respondents discriminated against Complainants in the terms, conditions or privileges of rental of a dwelling based on their familial status in violation of 42 U.S.C. § 3604(b).
57. Even if Respondents maintained an occupancy policy of 2 persons per bedroom at the subject property, such occupancy policy was overly restrictive and unlawfully made housing unavailable to Complainants, based on their familial status, in violation of 42 U.S.C. § 3604(a).
58. Respondents' adoption, enforcement and continued implementation of a 2 person per bedroom occupancy policy violates subsection 804(b) of the Act by imposing different terms and conditions on the sale or rental of a dwelling based upon familial status. 42 U.S.C. § 3604(b).
59. When Respondent Szczerbiak informed Complainants that he could not rent a 2-bedroom unit to them "because the law only allows 2 people per [bed]room," or words to that effect, as well as informed Complainants that if he did rent a 2-bedroom unit to Complainants they would have to move when their infant son turned 2 years of age, Respondent Szczerbiak engaged in discriminatory conduct by expressing a preference, limitation and/or discrimination based on familial status in violation of 42 U.S.C. § 3604(c).
60. Complainants and their children are aggrieved within the meaning of 42 U.S.C. § 3602(i). As a result of Respondents' discriminatory conduct, they suffered damages, including financial loss, emotional distress and loss of a housing opportunity. When they could not rent at the subject property, Complainants remained in their current rental, at a cost of \$30 more per month than Unit 1 at the subject property. In addition, Complainants were denied the opportunity to send their children to the school of their choice, because they were forced to remain in their current rental, rather than rent at the subject property, which was in a school district that Complainants found desirable. Complainants were especially motivated to move in order to avoid sending their children to the Milwaukee public school system. Complainants were also deprived of the opportunity to

enjoy the use of their boat and the outdoors with their family. Complainants expended significant time and money to drive the hour and a half round trip to the subject property for three days, resulting in financial loss. They also had to secure babysitters or family members to watch their children while they were gone.

61. Complainants suffered from emotional distress as a result of their failure to secure Unit 1 at the subject property. They were "devastated." They were told that their landlord was looking to raise the rent, so they felt that they may have lost what "good deal" they had when they informed the landlord that they were moving to the subject property. They had to wait a week to find out if they could stay in their current unit. During that time, Complainants looked for other units and travelled to West Bend, Slinger, and Jackson, but they were unable to find a suitable unit in a good school district. They felt very embarrassed and ashamed. Complainants felt embarrassed not only because of the discrimination they experienced, but also because they told many of their friends and family that they would be moving out of Milwaukee, but then they were unable to do so. They felt as if their children's future was "shattered" and that they failed to provide a better life for their children, which was to them "the most important thing." In Kewaskum, Complainant [REDACTED] felt safe walking around outside with her children, but she does not feel safe doing so where she currently lives in Milwaukee.
62. In being denied the opportunity to rent Unit 1 at the subject property, Complainants lost a unique and important housing feature. Complainants were particularly interested in the attached garage that Unit 1 offered. The attached garage feature was important because it made the unit more accessible for Complainant [REDACTED] disabled daughter from a previous relationship. Complainant [REDACTED] daughter visits him every other weekend. She uses a wheelchair to ambulate. There was only one step up from the attached garage into the 2-bedroom townhome unit, so Complainants would have been able to easily assist Complainant [REDACTED] daughter from the garage up the one step and into the unit. In contrast, the 3-bedroom unit that Complainants inspected at the subject property had entryways with multiple stairs which would have made it more difficult, if not impossible, for a wheelchair user to access. Additionally, Unit 1 had very large bedrooms, its own washer and dryer, updated appliances and was less expensive than where they were residing.

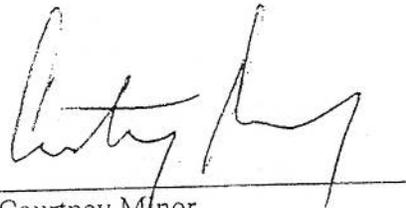
III. CONCLUSION

WHEREFORE, the Secretary of the United States Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to Section 3610(g)(2)(A) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604(a), (b), (c) and (d), and requests that an order be issued that:

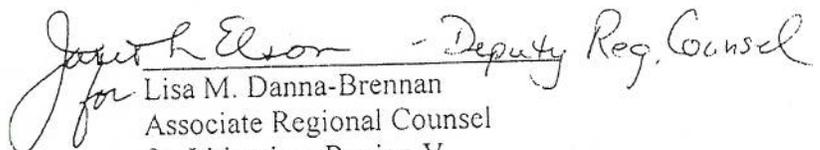
1. Declares that the discriminatory housing practices of Respondents, as set forth above, violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.*;

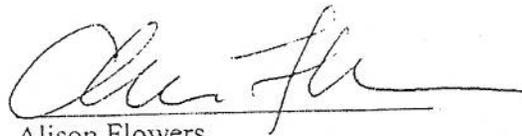
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them, from discriminating because of race, color and familial status against any person in any aspect of the sale or rental of a dwelling;
3. Enjoins Respondents from further violations of the Act;
4. Awards such monetary damages as will fully compensate Complainants and their children, aggrieved persons, for any and all other damages caused by the discriminatory conduct;
5. Assess a \$16,000 civil penalty against each Respondent for violations of the Act committed, pursuant to 42 U.S.C. § 3612(g)(3); and
6. Awards any additional relief as appropriate, pursuant to 42 U.S.C. § 3612(g)(3).

Respectfully submitted on this 26th day of September, 2012.



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